



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter
Governor

Dee C. Hansen
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355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

September 11, 1992

HAND DELIVERED

Mr. Harold Marston
Jay Pagano Estate
P.O. Box 136
Wellington, Utah 84501

Dear Mr. Marston:

Re: **Notice of Non-Compliance, Pagano Clay Project, S/015/062, Emery County, Utah**

This letter is sent to notify you, that your mining operation, or portions thereof, is not in compliance with certain sections of the Utah Mined Land Reclamation Act §40-8-1 et seq and the Minerals Reclamation Program Rules R647-1 through R647-5.

Location of Non-Compliance

The specific location of the non-compliance is in the NW 1/4 of Section 1, T16S, R11E, SLBM, Emery County, Utah.

Finding of Non-compliance

Specifically, you have failed to file a Notice of Intention to Commence a Large Mining Operation, as required by the Utah Mined Land Reclamation Act, Title 40-8-13(1)(a), and section R647-4-101 of the Minerals Rules.

On September 2, 1992, an on-site inspection was conducted of the Pagano Clay Project, by Mr. Holland Shepherd, a member of our Minerals Reclamation Program staff. During his inspection of the mine site, he observed that surface disturbance associated with the mining activity, has exceeded the 5-acre limit allowed for a Small Mine Operation. Any mining activity which disturbs more than 5 acres of land must be permitted under a Large Mine Notice of Intent (R647-1-106). You are currently mining without a permit to operate a large mining operation.

Page 2

Mr. Harold Marston

Notice of Non-Compliance

S/015/062

September 11, 1992

Your mining operation also appears to be in non-compliance with section R647-4-106.2, which addresses environmental damage to natural stream channels. Recent mining activities have affected the Price River stream channel, in the vicinity of the mine. Mining debris has been pushed into the riparian areas adjacent to the stream channel, and into the stream channel itself. Our inspection also noted that water is being pumped out of the Price River, presumably by the operator. It is our understanding that you have failed to **obtain** the necessary permits to operate in this fashion.

Your operation is being conducted in non-compliance with section R647-1-101.3 of the Mineral Rules, which addresses the operator's responsibility to obtain the requisite permits from other state and federal agencies. We have been advised that you have failed to obtain a right-of-way permit across state land adjacent to the mining operation.

You may also be in violation of section 40-8-9, of the Mined Land Reclamation Act, which addresses willful and knowing violation of the Act. You were informed, at the time you submitted the Small Mining Notice, for the Pagano Project, that you would need to file a Large Mining Notice prior to proceeding with mine expansion beyond the 5-acre threshold. You were also advised not to disturb the Price River channel, unless the appropriate permits were obtained.

Mitigation Requirements

1. You must submit a complete and technically adequate Large Mining Operation, Notice of Intention (Mining and Reclamation Plan). The Large Mining Notice of Intention must be received by this Division no later than October 15, 1992.

In addition to the standard large mine permitting requirements, the Notice must also include a description of the methods to be employed for mitigating the impacts to the Price River, which have resulted from the present mining activities.

2. The Division will also require that the operator submit a reclamation surety by the October 15, 1992 deadline. The surety must cover all on-site mining-related surface disturbance created to date by the operator. Until a site-specific surety amount can be determined as part of the permitting process, a Program average bond amount will be assessed at \$3,000 per acre of disturbance including access roads.

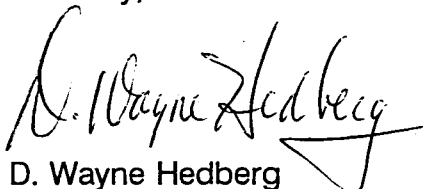
Page 3
Mr. Harold Marston
Notice of Non-Compliance
S/015/062
September 11, 1992

Consequences of Continued Non-Compliance

Failure to comply by the time frame(s) as set forth in this Notice, may result in the issuance of a Notice of Agency Action. A formal Agency Action would require you to appear before the Board of Oil, Gas and Mining at a formally scheduled hearing. The Board, after notice and hearing, pursuant to rule and statute, may enter an Order requiring abatement or other appropriate action as deemed necessary. The Order may include one or a combination of the following actions: issuance of a compliance or abatement order; a cessation of mining operations; immediate reclamation of the land affected; or other lawful remedies.

Please contact me or Holland Shepherd immediately if we can assist you in resolving this non-compliance problem. A copy of the Large Mining Operations rules and a Large Mining Operation, Notice of Intention has been enclosed for your use.

Sincerely,



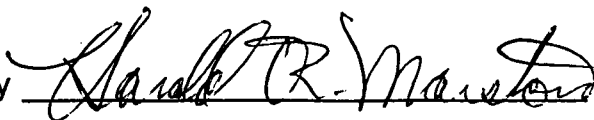
D. Wayne Hedberg
Permit Supervisor
Minerals Reclamation Program

jb
Enclosures

cc: Gary Bagley, State Lands and Forestry
Mark Page, Water Rights, Price Office
Kathy Trott, Army Corp of Engineers
Lowell Braxton, DOGM
Tom Mitchell, Assistant Attorney General

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Received by



Date

9-11-92